

ESTTA Tracking number: **ESTTA381443**

Filing date: **12/01/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

### Petitioner Information

Name	West Coast Beverage, LLC		
Entity	LLC	Citizenship	Arizona
Address	4390 E. Rosemonte Dr. Phoenix, AZ 85050 UNITED STATES		

Correspondence information	Daniel E. Rosenfield Counsel Rosenfield Legal Group, PLLC 7047 E. Greenway Parkway Ste. 250 Scottsdale, AZ 85258 UNITED STATES drosen@rosenfieldlegalgroup.com Phone:480 609 9700
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### Registration Subject to Cancellation

Registration No	3377353	Registration date	02/05/2008
Registrant	David Ravandi #402 308 North Sycamore Ave. Los Angeles, CA 90036 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 033. First Use: 2007/01/02 First Use In Commerce: 2007/01/02 All goods and services in the class are cancelled, namely: Alcoholic beverages, namely, Tequila, Mezcal, Vodka, Rum
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### Grounds for Cancellation

Other	Failure to use in commerce in accordance with Section 45 of the Trademark Act.
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Related Proceedings	Petitioner's TM App. 85/104615
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Attachments	Petition to Cancel.pdf ( 4 pages )(2104213 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Daniel E. Rosenfield/
Name	Daniel E. Rosenfield
Date	12/01/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

WEST COAST BEVERAGE, LLC,	)	
	)	Cancellation No.:
Petitioner,	)	
	)	PETITION FOR CANCELLATION
v.	)	
	)	
DAVID RAVANDI	)	Registration No.: 3377353
	)	Registration Date: February 5, 2008
Registrant	)	

Petitioner, West Coast Beverage, LLC, believes that it will be damaged by the continued registration of the mark "DESEO" (hereinafter "Mark") shown in Registration No. 3377353 (hereinafter "Registration") for all goods listed in International Class 033.

As grounds for its petition, Petitioner alleges the following:

**I. PARTIES**

1. Petitioner West Coast Beverage, LLC, is an LLC duly formed and existing under the laws of the State of Arizona, located at 4390 E. Rosemonte Dr., Phoenix, AZ 85050.
2. On information and belief, Registrant David Ravandi, owner of the subject Registration is located at 308 N. Sycamore Ave., Apt. 402, Los Angeles, California, 90036.

**II. REGISTRANT CLAIMED USE AS OF THE DATE OF FILING**

3. Registrant filed his application for registration of the mark "DESEO" in International Class 033 on February 21, 2007 out of which registration No. 3377353 issued on February 5, 2008.

4. Registrant filed under section 1A, claiming that the mark was in use as of the date of filing.

5. Registrant supported his claim by providing a specimen comprising a photograph of a bottle bearing a round label containing only the word "DESEO" (hereinafter "Specimen".) No other words or information appears on the label.

### **III. REGISTRANT NEVER USED THE SPECIMEN IN COMMERCE**

6. The mark DESEO was not being used by Registrant when he applied for registration. In fact, Registrant has never used the mark DESEO as claimed in his application for registration.

7. Likewise, Registrant was not using the Specimen when he filed for registration and has never used the Specimen as claimed in his application for registration.

8. The bottle upon which the Specimen was mounted is the bottle used for the Casa Noble line of products. Even today, the Casa Noble products are unrelated to the Mark and the Specimen is totally unlike the label on the Casa Noble products.

### **IV. THE SPECIMEN COULD NOT LEGALLY BE USED IN COMMERCE**

9. Both Petitioner's and Registrant's marks are intended for use on bottles containing alcoholic beverages sold in the United States.

10. Labels for bottles that contain alcoholic beverages are strictly regulated by federal law as administered by the United States Department Of The Treasury's Alcohol and Tobacco Tax and Trade Bureau.

11. Federal law mandates that certain information must be presented on the label such as where the product was bottled, who bottled the product, alcohol content and fluid contents.

12. Federal law mandates that labels for Alcoholic beverage bottles must be submitted for review and receive approval prior to use of that label.

13. Approval is granted in the form of a Certificate of Label Approval, known in the industry as the COLA approval.

14. The COLA records indicate that Registrant has never applied for, or received, label approval for the Specimen.

15. Since the Specimen bearing the Mark did not contain any of the required information and since No COLA was obtained, or even applied for, the Specimen bearing the Mark could not be used on any alcoholic beverage bottle in the U.S.

#### **V. PETITIONER'S MARK**

16. Petitioner filed its application for registration of the mark "DESEO" in International Class 033 on August 8, 2010 and is actively preparing to market products under the Mark "DESEO". Petitioner's application was assigned Serial Number 85104615.

17. Petitioner filed for its label approval with the United States Department of the Treasury's Alcohol and Tobacco Tax and Trade Bureau on June 8, 2010 and received approval on July 9, 2010.

#### **VI. REGISTRATION IS VOID *AB INITIO***

18. Registrant was not using the Mark DESEO in commerce when he filed his application for registration.

19. Registrant's Specimen was not being used in commerce when he filed his application for registration.



20. As of the claimed date of use, the Specimen was not eligible to be used in commerce because of the lack of compliance with the mandatory requirements. The Specimen simply could not be used on any alcoholic beverage bottle.

21. Since Registrant was not using the Mark or the Specimen in commerce then, Registration No. 3377353 being based on a date of use that does not exist, is void *ab initio*.

## **VII. PETITIONER SEEKS CANCELLATION OF THE REGISTRATION**

WHEREFORE, Petitioner requests that Trademark Registration No. 3377353 be cancelled and that Registrant's Letter of Protest filed against Petitioner's trademark application Serial Number 85/104615 be stricken from the application file.

DATED: December 1, 2010

Respectfully Submitted,

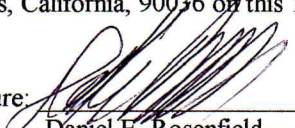
**Rosenfield Legal Group, PLLC**

By: 

Daniel E. Rosenfield  
Counsel for Petitioner  
7047 E. Greenway Pkwy.  
Ste. 250  
Scottsdale, AZ 85254  
(480) 609-9700

### **Certificate of Mailing**

I hereby certify that a copy of this correspondence and any attachments is being deposited with the U.S. Postal Service with sufficient postage for first class mail, addressed to David Ravandi, 308 N. Sycamore Ave., Apt. 402, Los Angeles, California, 90036 on this 1<sup>st</sup> day of December, 2010.

Signature: 

Daniel E. Rosenfield